

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS MADRID 001346

SIPDIS

SENSITIVE

DEPARTMENT FOR OES/OA AND EUR/WE

E.O. 12958: N/A

TAGS: [KRCV](#) [KTIA](#) [PHSA](#) [SENV](#) [SP](#)

SUBJECT: SPAIN CONFIRMS NEED FOR DIPLOMATIC CLEARANCE
REQUEST FOR U.S. COMMERCIAL VESSEL

REF: SECSTATE 52463 AND PREVIOUS

1. (U) ECONCOUNS and ESTHOFF made reftel points April 7 to MFA International Economic Affairs Director General (A/S equivalent) Emilio Fernandez-Castano, urging Spain to not/not require a formal diplomatic clearance for 3U Technologies or other future U.S. commercial enterprise vessels operating within Spain's Exclusive Economic Zone (EEZ). Fernandez-Castano, who was joined by MFA Deputy Director General Pablo Montesino-Espartero and Coordinator for Land, Sea and Air Issues Juan Luis Munoz de Laborde Bardan, said that while his office sought to foster a more intense economic relationship with the U.S., and thus viewed 3U's project in a positive light, a review by the MFA's lawyers had indicated that a diplomatic clearance request would be required before the GOS could authorize 3U's activities.

2. (U) Fernandez-Castano said Spanish legislation implementing Law of the Sea Treaty (UNCLOS) obligations required a clearance in 3U's case. The MFA had reviewed in detail 3U's proposed activities and had determined that they do not/not qualify for the UNCLOS exemptions for commercial cable laying and maintenance vessels. Fernandez-Castano argued that these exemptions were for vessels that would lay or maintain communication cables that would actually connect persons/entities and could not be applied to vessels like 3U that would lay and test temporary cables as part of experimental research. Thus, the MFA does not/not accept the argument made in reftel nonpaper that 3U's venture is "purely commercial." Spain believes the endeavor includes "research" elements and thus requires a formal diplomatic clearance request.

3. (U) Elaborating on his point, Fernandez-Castano repeatedly stressed that the U.S. is a friend and ally of Spain and that Spain wants more intensive commercial ties with the U.S. The problem, he explained, was one of legal precedent. Were Spain to permit 3U to operate without a diplomatic clearance, vessels from other less friendly states/entities (he mentioned China and North Korea as examples) could then try to operate within the Spanish EEZ without prior notification. Spain would thus hold firm to its request for a diplomatic clearance request for 3U.

4. (U) De Laborde said that his office, in hopes of speeding the approval process, had sought the requisite inter-ministerial clearances for 3U, even though the MFA had not yet received our diplomatic clearance request. He reported that he had received all the necessary written clearances except for that of the Ministry of Defense. He indicated that he had received a verbal clearance from Defense and was simply waiting for the written confirmation. De Laborde suggested that should the U.S. agree to make a diplomatic clearance request for 3U, his office would approve it within days (not weeks). Fernandez-Castano reiterated that the approval of 3U's activities is not in question; they would be approved. Spain simply needs a diplomatic note to protect its legal equities.

5. (SBU) COMMENT: Embassy Madrid believes that Spain will hold firm on this issue and will not permit 3U to operate without a diplomatic clearance. We recommend that the Department authorize this Embassy to deliver the diplomatic clearance note as requested by the GOS. Given our legal disagreement with Spain over whether 3U's activities should require a diplomatic clearance, we presume it would be possible to caveat such a clearance request with language that would serve to defend U.S. legal equities vis-a-vis UNCLOS interpretation. 3U is losing money every day that this drags on. We would hope the Department could find a way to continue to engage Spain over this set of issues without damaging U.S. corporate interests.

MANZANARES